

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4411**

4 (By Delegates R. Phillips, Ashley, Barker, Craig, Eldridge, A.
5 Evans, Ferro, Hamilton and Skaff)

6 (By request of the Department of Environmental Protection)

7 (Originating in Committee on the Judiciary)

8 [February 21, 2014]

9

10 A BILL to amend and reenact §22-15-8 and §22-15-11 of the Code of
11 West Virginia, 1931, as amended, relating to the disposal of
12 drill cuttings and associated drilling waste generated from
13 well sites at commercial solid waste facilities; allowing for
14 the receipt of additional drilling waste at commercial solid
15 waste facilities above the facility's existing tonnage limit
16 through December 31, 2016, if certain conditions are met;
17 requiring that all tonnages received at the facility,
18 including drill cuttings and drilling waste, be within the
19 facility's permitted tonnage limit, on and after January 1,
20 2017; recognizing the facility's continuing obligation to
21 receive municipal solid waste while exceeding its permitted
22 tonnage caps; requiring radiation and leachate monitoring at
23 all facilities receiving drill cuttings and drilling waste;
24 establishing minimum requirements for the monitoring program;
25 requiring the investigation and report by the division of
26 environmental protection to the legislature on specified

1 issues associated with the disposal of drill cuttings and
2 drilling wastes at landfills; required scope of study;
3 establishing deadlines, effective dates; establishment of an
4 additional solid waste fee; and requiring the promulgation of
5 emergency and legislative rules.

6 *Be it enacted by the Legislature of West Virginia:*

7 That §22-15-8 and §22-15-11 of the Code of West Virginia,
8 1931, as amended, be amended and reenacted to read as follows:

9 **ARTICLE 15. SOLID WASTE MANAGEMENT ACT.**

10 **§22-15-8. Limit on the size of solid waste facilities; rulemaking.**

11 (a) On and after October 1, 1991, it is unlawful to operate
12 any commercial solid waste facility that handles between ten
13 thousand and thirty thousand tons of solid waste per month, except
14 as provided in section nine of this article and sections
15 twenty-six, twenty-seven and twenty-eight, articles four and
16 four-a, chapter twenty-two-c of this code.

17 (b) Except as provided in section nine of this article, the
18 maximum quantity of solid waste which may lawfully be received or
19 disposed of at any commercial solid waste facility is thirty
20 thousand tons per month.

21 (c) The ~~director~~ secretary shall, within the limits contained
22 in this article, place a limit on the amount of solid waste
23 received or disposed of per month in commercial solid waste
24 facilities. The ~~director~~ secretary shall consider at a minimum the
25 following criteria in determining a commercial solid waste
26 facility's monthly tonnage limit:

1 (1) The proximity and potential impact of the solid waste
2 facility upon groundwater, surface water and potable water;

3 (2) The projected life and design capacity of the solid waste
4 facility;

5 (3) The available air space, lined acreage, equipment type and
6 size, adequate personnel and wastewater treatment capabilities; and

7 (4) Other factors related to the environmentally safe and
8 efficient disposal of solid waste.

9 (d) Within the limits established in this article, the
10 ~~director~~ secretary shall determine the amount of sewage sludge
11 which may be safely treated, stored, processed, composted, dumped
12 or placed in a solid waste facility.

13 (e) The ~~director~~ secretary shall promulgate emergency rules,
14 and propose for legislative promulgation, legislative rules
15 pursuant to the provisions of article three, chapter twenty-nine-a
16 of this code, to effectuate the requirements of this section. When
17 developing the rules, the ~~director~~ secretary shall consider at a
18 minimum the potential impact of the treatment, storage, processing,
19 composting, dumping or placing sewage sludge at a solid waste
20 facility:

21 (1) On the groundwater, surface waters and potable waters in
22 the area;

23 (2) On the air quality in the area;

24 (3) On the projected life and design capacity of the solid
25 waste facility;

26 (4) On the available air space, lined acreage, equipment type

1 and size, personnel and wastewater treatment capabilities;

2 (5) The facility's ability to adequately develop markets and
3 market the product which results from the proper treatment of
4 sewage sludge; and

5 (6) Other factors related to the environmentally safe and
6 efficient treatment, storage, processing, composting, dumping or
7 placing of sewage sludge at a solid waste facility.

8 (f) Sewage sludge disposed of at a landfill must contain at
9 least twenty percent solid by weight. This requirement may be met
10 by adding or blending sand, sawdust, lime, leaves, soil or other
11 materials that have been approved by the ~~director~~ secretary prior
12 to disposal. Alternative sewage sludge disposal methods can be
13 utilized upon obtaining written approval from the ~~director~~
14 secretary. No facility may accept for land filling in any month
15 sewage sludge in excess of twenty-five percent of the total tons of
16 solid waste accepted at the facility for land filling in the
17 preceding month.

18 (g) Notwithstanding any other provision of this code to the
19 contrary, a commercial solid waste facility may lawfully receive
20 drill cuttings and drilling waste generated from horizontal well
21 sites above the monthly tonnage limits of the commercial solid
22 waste facility, through December 31, 2016, under the following
23 conditions and limitations:

24 (1) (A) The drill cuttings and associated drilling waste are
25 placed in a separate cell dedicated solely to the disposal of drill
26 cuttings and drilling waste; and

1 (B) The separate cell dedicated to drill cuttings and
2 associated drilling waste is constructed pursuant to the standards
3 set out in this article and Legislative rules promulgated
4 thereunder.

5 (2) The secretary may only allow those solid waste facilities
6 that applied by December 31, 2013 for a permit modification to
7 construct a separate cell for drill cuttings and associated
8 drilling waste, to accept drill cuttings and associated drilling
9 waste at its commercial solid waste facility without counting the
10 deposited drill cuttings and associated drilling waste towards the
11 landfill's permitted monthly tonnage limits, until September 30,
12 2014.

13 (3) No solid waste facility may exclude or refuse to take
14 municipal solid waste in the quantity up to and including its
15 permitted tonnage limit while the facility is allowed to lawfully
16 receive drill cuttings or drilling waste above its permitted
17 tonnage limits.

18 (h) Any solid waste facility taking drill cuttings and
19 drilling waste must install radiation monitors by January 1, 2015.
20 The secretary shall promulgate emergency and legislative rules to
21 establish limits for unique toxins associated with drilling
22 cuttings and drilling waste including, but not limited to heavy
23 metals, petroleum-related chemicals, (benzene, toluene, xylene,
24 barium, chlorides, radium and radon, and establish the procedures
25 the facility must follow if that limit is exceeded: *Provided, That*
26 said rules shall establish and set forth a procedure to provide

1 that any detected radiation readings above any established
2 radiation limits will require that the solid waste landfill
3 immediately cease accepting all waste until the secretary has
4 inspected said landfill and certified pursuant to established rules
5 and regulations that radiation levels have returned to below the
6 established radiation limits.

7 (i) On and after July 1, 2016, the total amount of waste
8 received at a commercial solid waste landfill with one or more
9 operating cells on its property may not exceed the total volume of
10 its permitted capacity for that facility in any month, and the
11 quantities of drill cuttings and and drilling waste received at
12 that facility shall be counted and applied toward the facility's
13 established tonnage cap.

14 (j) On or before January 1, 2015, the secretary shall submit
15 an investigation and report to the Joint Legislative Oversight
16 Commission on Water Resources and the Legislature's Joint Committee
17 on Government and Finance which examines: (1) the hazardous
18 characteristics of leachate collected from solid waste facilities
19 receiving drill cuttings and drilling waste, including but not
20 limite to the presence of heavy metals, petroleum related chemicals
21 (benzene, toluene, xylene, etc.) barium, chlorides, radium and
22 radon; (2) the potential negative impacts on the surface water or
23 groundwater resources of this state associated with the
24 collection, treatment and disposal of leachate from such landfills;
25 and (3) the technical and economic feasibility and benefits of
26 establishing additional and/or separate disposal locations which

1 are funded, constructed, owned and/or operated by the oil and gas
2 industry.

3 **§22-15-11. Solid waste assessment fee; penalties.**

4 (a) Imposition. -- A solid waste assessment fee is hereby
5 imposed upon the disposal of solid waste at any solid waste
6 disposal facility in this state in the amount of one dollar and
7 seventy-five cents per ton or part thereof of solid waste. The fee
8 imposed by this section is in addition to all other fees and taxes
9 levied by law and shall be added to and constitute part of any
10 other fee charged by the operator or owner of the solid waste
11 disposal facility.

12 (b) Collection, return, payment and records. -- The person
13 disposing of solid waste at the solid waste disposal facility shall
14 pay the fee imposed by this section, whether or not such person
15 owns the solid waste, and the fee shall be collected by the
16 operator of the solid waste facility who shall remit it to the tax
17 commissioner.

18 (1) The fee imposed by this section accrues at the time the
19 solid waste is delivered to the solid waste disposal facility.

20 (2) The operator shall remit the fee imposed by this section
21 to the tax commissioner on or before the fifteenth day of the month
22 next succeeding the month in which the fee accrued. Upon
23 remittance of the fee, the operator is required to file returns on
24 forms and in the manner as prescribed by the tax commissioner.

25 (3) The operator shall account to the state for all fees
26 collected under this section and shall hold them in trust for the

1 state until remitted to the tax commissioner.

2 (4) If any operator fails to collect the fee imposed by this
3 section, he or she is personally liable for such amount as he or
4 she failed to collect, plus applicable additions to tax, penalties
5 and interest imposed by article ten, chapter eleven of this code.

6 (5) Whenever any operator fails to collect, truthfully account
7 for, remit the fee or file returns with the fee as required in this
8 section, the tax commissioner may serve written notice requiring
9 such operator to collect the fees which become collectible after
10 service of such notice, to deposit such fees in a bank approved by
11 the tax commissioner, in a separate account, in trust for and
12 payable to the tax commissioner, and to keep the amount of such
13 fees in such account until remitted to the tax commissioner. Such
14 notice remains in effect until a notice of cancellation is served
15 on the operator or owner by the tax commissioner.

16 (6) Whenever the owner of a solid waste disposal facility
17 leases the solid waste facility to an operator, the operator is
18 primarily liable for collection and remittance of the fee imposed
19 by this section and the owner is secondarily liable for remittance
20 of the fee imposed by this section. However, if the operator
21 fails, in whole or in part, to discharge his or her obligations
22 under this section, the owner and the operator of the solid waste
23 facility are jointly and severally responsible and liable for
24 compliance with the provisions of this section.

25 (7) If the operator or owner responsible for collecting the
26 fee imposed by this section is an association or corporation, the

1 officers thereof are liable, jointly and severally, for any default
2 on the part of the association or corporation, and payment of the
3 fee and any additions to tax, penalties and interest imposed by
4 article ten, chapter eleven of this code may be enforced against
5 them as against the association or corporation which they
6 represent.

7 (8) Each person disposing of solid waste at a solid waste
8 disposal facility and each person required to collect the fee
9 imposed by this section shall keep complete and accurate records in
10 such form as the tax commissioner may require in accordance with
11 the rules of the tax commissioner.

12 (c) Regulated motor carriers. -- The fee imposed by this
13 section and section twenty-two, article five, chapter seven of this
14 code is considered a necessary and reasonable cost for motor
15 carriers of solid waste subject to the jurisdiction of the public
16 service commission under chapter twenty-four-a of this code.
17 Notwithstanding any provision of law to the contrary, upon the
18 filing of a petition by an affected motor carrier, the public
19 service commission shall, within fourteen days, reflect the cost of
20 said fee in said motor carrier's rates for solid waste removal
21 service. In calculating the amount of said fee to said motor
22 carrier, the commission shall use the national average of pounds of
23 waste generated per person per day as determined by the United
24 States Environmental Protection Agency.

25 (d) Definition of solid waste disposal facility. -- For
26 purposes of this section, the term "solid waste disposal facility"

1 means any approved solid waste facility or open dump in this state,
2 and includes a transfer station when the solid waste collected at
3 the transfer station is not finally disposed of at a solid waste
4 disposal facility within this state that collects the fee imposed
5 by this section. Nothing herein authorizes in any way the creation
6 or operation of or contribution to an open dump.

7 (e) Exemptions. -- The following transactions are exempt from
8 the fee imposed by this section:

9 (1) Disposal of solid waste at a solid waste disposal facility
10 by the person who owns, operates or leases the solid waste disposal
11 facility if the facility is used exclusively to dispose of waste
12 originally produced by such person in such person's regular
13 business or personal activities or by persons utilizing the
14 facility on a cost-sharing or nonprofit basis;

15 (2) Reuse or recycling of any solid waste;

16 (3) Disposal of residential solid waste by an individual not
17 in the business of hauling or disposing of solid waste on such days
18 and times as designated by the ~~director~~ secretary is exempt from
19 the solid waste assessment fee; and

20 (4) Disposal of solid waste at a solid waste disposal facility
21 by a commercial recycler which disposes of thirty percent or less
22 of the total waste it processes for recycling. In order to qualify
23 for this exemption each commercial recycler must keep accurate
24 records of incoming and outgoing waste by weight. Such records
25 must be made available to the appropriate inspectors from the
26 division, upon request.

1 (f) Procedure and administration. -- Notwithstanding section
2 three, article ten, chapter eleven of this code, each and every
3 provision of the "West Virginia Tax Procedure and Administration
4 Act" set forth in article ten, chapter eleven of this code shall
5 apply to the fee imposed by this section with like effect as if
6 said act were applicable only to the fee imposed by this section
7 and were set forth in extenso herein.

8 (g) Criminal penalties. -- Notwithstanding section two,
9 article nine, chapter eleven of this code, sections three through
10 seventeen, article nine, chapter eleven of this code shall apply to
11 the fee imposed by this section with like effect as if said
12 sections were applicable only to the fee imposed by this section
13 and were set forth in extenso herein.

14 (h) Dedication of proceeds. -- The net proceeds of the fee
15 collected by the tax commissioner pursuant to this section shall be
16 deposited at least monthly in an account designated by the ~~director~~
17 secretary. The ~~director~~ secretary shall allocate twenty-five cents
18 for each ton of solid waste disposed of in this state upon which
19 the fee imposed by this section is collected and shall deposit the
20 total amount so allocated into the "Solid Waste Reclamation and
21 Environmental Response Fund" to be expended for the purposes
22 hereinafter specified. The first one million dollars of the net
23 proceeds of the fee imposed by this section collected in each
24 fiscal year shall be deposited in the "Solid Waste Enforcement
25 Fund" and expended for the purposes hereinafter specified. The
26 next two hundred fifty thousand dollars of the net proceeds of the

1 fee imposed by this section collected in each fiscal year shall be
2 deposited in the "Solid Waste Management Board Reserve Fund", and
3 expended for the purposes hereinafter specified: Provided, That in
4 any year in which the water development authority determines that
5 the solid waste management board reserve fund is adequate to defer
6 any contingent liability of the fund, the water development
7 authority shall so certify to the ~~director~~ secretary and the
8 ~~director~~ secretary shall then cause no less than fifty thousand
9 dollars nor more than two hundred fifty thousand dollars to be
10 deposited to the fund: Provided, however, That in any year in
11 which the water development authority determines that the solid
12 waste management board reserve fund is inadequate to defer any
13 contingent liability of the fund, the water development authority
14 shall so certify to the ~~director~~ secretary and the ~~director~~
15 secretary shall then cause not less than two hundred fifty thousand
16 dollars nor more than five hundred thousand dollars to be deposited
17 in the fund: *Provided further*, That if a facility owned or operated
18 by the state of West Virginia is denied site approval by a county
19 or regional solid waste authority, and if such denial contributes,
20 in whole or in part, to a default, or drawing upon a reserve fund,
21 on any indebtedness issued or approved by the solid waste
22 management board, then in that event the solid waste management
23 board or its fiscal agent may withhold all or any part of any funds
24 which would otherwise be directed to such county or regional
25 authority and shall deposit such withheld funds in the appropriate
26 reserve fund. The ~~director~~ secretary shall allocate the remainder,

1 if any, of said net proceeds among the following three special
2 revenue accounts for the purpose of maintaining a reasonable
3 balance in each special revenue account, which are hereby continued
4 in the state treasury:

5 (1) The "Solid Waste Enforcement Fund" which shall be expended
6 by the ~~director~~ secretary for administration, inspection,
7 enforcement and permitting activities established pursuant to this
8 article;

9 (2) The "Solid Waste Management Board Reserve Fund" which
10 shall be exclusively dedicated to providing a reserve fund for the
11 issuance and security of solid waste disposal revenue bonds issued
12 by the solid waste management board pursuant to article three,
13 chapter twenty-two-c of this code;

14 (3) The "Solid Waste Reclamation and Environmental Response
15 Fund" which may be expended by the ~~director~~ secretary for the
16 purposes of reclamation, cleanup and remedial actions intended to
17 minimize or mitigate damage to the environment, natural resources,
18 public water supplies, water resources and the public health,
19 safety and welfare which may result from open dumps or solid waste
20 not disposed of in a proper or lawful manner.

21 (i) Findings. -- In addition to the purposes and legislative
22 findings set forth in section one of this article, the Legislature
23 finds as follows:

24 (1) In-state and out-of-state locations producing solid waste
25 should bear the responsibility of disposing of said solid waste or
26 compensate other localities for costs associated with accepting

1 such solid waste;

2 (2) The costs of maintaining and policing the streets and
3 highways of the state and its communities are increased by long
4 distance transportation of large volumes of solid waste; and

5 (3) Local approved solid waste facilities are being
6 prematurely depleted by solid waste originating from other
7 locations.

8 (j) Imposition of horizontal waste drilling waste assessment
9 fee- An additional solid waste assessment fee is hereby imposed
10 upon the disposal of drill cuttings and drilling waste generated by
11 horizontal well sites in the amount of one dollar per ton, which
12 fee is in addition to all other fees and taxes levied by this
13 section or otherwise and shall be added to and constitute part of
14 any other fee charged by the operator or owner of the solid waste
15 disposal facility.

16 (1) The horizontal drilling waste assessment fee shall be
17 collected and administered in the same manner as the solid waste
18 assessment fee imposed by this section, but shall be imposed only
19 upon the disposal of drill cuttings and drilling waste generated by
20 horizontal well sites.

21 (2) The net proceeds of the horizontal drilling waste fee
22 shall be deposited into the "Gas Field Highway Repair and
23 Horizontal Drilling Waste Study Fund" created by this subsection.

24 (3) The "Gas Field Highway Repair and Horizontal Drilling
25 Waste Study Fund" is hereby created as a special revenue fund in
26 the state treasury to be administered by West Virginia division of

1 highways and to be expended only on the improvement, maintenance and
2 repair of public roads in this state of three lanes or less (before
3 such improvement) that are identified by the commissioner of
4 highways as having been damaged by trucks and other traffic
5 associate with horizontal well drilling sites or the disposal of
6 waste generated by such sites, and that experience congestion
7 caused, in whole or in part, by such trucks and traffic that
8 interferes with the use of said roads by residents in the vicinity
9 of such roads: *Provided*, That up to \$750,000 from such fund shall
10 be made available to the Division of Environmental Protection from
11 the same fund to offset contracted costs incurred by that Division
12 of Environmental Protection while undertaking the horizontal
13 drilling waste disposal studies mandated by the provisions of
14 subsection j, section eight of this article.